

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

MARK S. PRITT

Plaintiff

V.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00164-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

- {¶1} Plaintiff, Mark Pritt, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), in which he claimed he was missing personal property. Plaintiff asserted on December 18, 2012, at approximately 6:00 a.m. he placed a bag of laundry at the foot of his bed to be picked up by the porter and cleaned. He left his cell for his dialysis at approximately 8:00 a.m. and returned at 12:30 p.m. and the clean laundry was not present. He spoke to the laundry porter who informed him he placed the bag of clean laundry on his bed at 11:30 a.m. Plaintiff was transported to OSU medical center that evening. When he returned he asked that a theft/loss report be filed and was told that was not necessary. He also asked the unit sergeant if he could watch the surveillance footage during that hour which the theft had to occur and was told “we don’t do that.”
- {¶2} Plaintiff seeks \$113.65 in damages to replace: four pairs of boxers, three navy tee shirts, one long sleeve white tee shirt, four pairs of white socks, one navy sweat

shirt, one navy sweat pant, one blue towel, one blue washcloth, plus one laundry bag and “\$4.00 in postage to have sent to me.” Plaintiff provided copies of invoices for the purchases of the claimed items. Plaintiff submitted the \$25.00 filing fee.

{¶3} Defendant filed an investigation report in which it denied liability based on the contention that it “does not have the liability of an insurer with respect to inmate property.” Even though defendant conceded it may have a duty to search for plaintiff’s missing property, it contended it could not do so in this circumstance because plaintiff did not report the theft in order to make defendant aware of the need to conduct a search. Defendant asserted, contrary to plaintiff’s allegation, he was transferred to OSU medical on December 20, 2012, not December 18, 2012 (the day of the theft). Therefore, plaintiff had sufficient time to file the theft loss report before his transfer.

{¶4} Plaintiff filed a response to defendant’s investigation report in which he provided a copy of an Informal Complaint Resolution, dated December 18, 2013, which he asserted went unanswered. He also indicated there was a theft/loss report filed by an individual in the dorm office. Lastly, he contended he has sent kites and letters to various departments and he has not received replies from most of them.

CONCLUSIONS OF LAW

{¶5} In order to prevail, in a claim for negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant’s breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St. 3d 79, 2003-Ohio–2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.*, 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707 (1984).

{¶6} “Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided by . . . the court . . .” *Pacher v. Invisible Fence of Dayton*, 154 Ohio App. 3d 744, 788 N.E. 2d 1121, ¶41 (2nd Dist.), citing *Miller v. Paulson*, 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521 (10th Dist. 1994); *Mussivand v. David*, 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265 (1989).

{¶7} Plaintiff must produce evidence which affords a reasonable basis for the conclusion that defendant’s conduct is more likely a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction*,

85-01546-AD (1985). Defendant has a duty to use ordinary care in packing or storing property even if it is due to disciplinary confinement. *Gray v. Department of Rehabilitation and Correction*, 84-01577-AD jud (1985).

{¶8} This court in *Mullett v. Department of Correction*, 76-0292-AD (1976), held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make “reasonable attempts to protect, or recover” such property.

{¶9} Although not strictly responsible for a prisoner’s property, defendant had at least the duty of using the same degree of care as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility*, 76-0356-AD (1979).

{¶10} Defendant is not responsible for thefts committed by inmates unless an agency relationship is shown or it is shown that defendant was negligent. *Walker v. Southern Ohio Correctional Facility*, 78-0217-AD (1978). Plaintiff’s claim is based in part of the loss due to negligence of the laundry porter and defendant’s inability to perform an appropriate investigation and search for his clothing after he reported the loss. Therefore, the fact that another inmate committed the theft does not automatically bar plaintiff from recovery.

{¶11} Generally, defendant has a duty to conduct a search for plaintiff’s property within a reasonable time after being notified of the theft. *Phillips v. Columbus Correctional Facility*, 79-0132-AD (1981); *Russell v. Warren Correctional Inst.*, 98-03305-AD (1999). Accordingly, defendant’s assertion that it must be first put on notice of the theft before performing a search is accurate. Plaintiff provided a copy of an Informal Complaint Resolution, dated December 18, 2013, purportedly to prove defendant was put on notice of the theft on the date the incident. The form bears no signature, or response, from defendant. As such, with no other evidence, this document is insufficient for purposes of proving defendant was put on notice of plaintiff’s loss. Even so, plaintiff has established a bailment relationship existed when defendant’s agent took possession of his laundry.

{¶12} When prison authorities obtain possession of an inmate’s property, a bailment relationship arises between the correctional facility and the inmate. *Buhrow v. Department of Rehabilitation and Correction*, 85-01562-AD (1985); *Sallows v. Department of Correction*, 85-07773-AD (1986).

{¶13} By virtue of this relationship, defendant must exercise ordinary care in handling

and storing the property. *Buhrow; Sallows*.

{¶14} If property is lost or stolen while in defendant's possession, it is presumed, without evidence to the contrary, defendant failed to exercise ordinary care. *Merrick v. Department of Rehabilitation and Correction*, 85-05029-AD (1985); *Cox v. Southern Ohio Training Center*, 84-03740-AD (1986). However, plaintiff's failure to prove delivery of the property to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant in respect to lost property. *Prunty v. Department of Rehabilitation and Correction*, 86-02821-AD (1987). Plaintiff cannot recover for property loss when he fails to produce sufficient evidence to establish that defendant actually assumed control over the property. *Whiteside v. Orient Correctional Inst.*, Ct. of Cl. No. 2002-05751, 2005-Ohio-4455; obj. overruled, 2005-Ohio-5068. Plaintiff provided sufficient evidence from which the court can infer defendant, through an inmate assigned the job of laundry porter, assumed control of his laundry. This court finds defendant unreasonable in allowing the laundry porter to leave plaintiff's personal property on his bed unattended when it is reasonably foreseeable that it may be stolen.

{¶15} As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility*, 61 Ohio Misc. 2d 239, 577 N.E. 2d 160 (Ct. of Cl.1988). Upon review of the evidence provided by plaintiff, the total damages suffered by plaintiff amount to \$89.58. Therefore, judgment is rendered in favor of plaintiff in the amount of \$89.58 plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc. 2d 19, 587 N.E. 2d 990 (Ct. of Cl.1990).

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

MARK S. PRITT

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00164-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$110.58. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Mark S. Pritt, #156-453
11781 St. Rt. 762
Orient, Ohio 43146

Stephen Gray, Chief Counsel
Dept. Of Rehabilitation and Correction
770 West Broad Street
Columbus, Ohio 43222

DJM/tad
Filed 9/23/14
Sent to S.C. Reporter 9/14/15